

AMENDED IN SENATE MARCH 25, 2014

**SENATE BILL**

**No. 1299**

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**Introduced by Senator Padilla**

February 21, 2014

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An act to ~~amend~~ add Section ~~6401.7~~ of 6401.8 to the Labor Code, relating to occupational safety and health.

LEGISLATIVE COUNSEL'S DIGEST

SB 1299, as amended, Padilla. ~~Injury prevention programs. Workplace violence prevention plans.~~

*Existing law regulates the operation of health facilities, including hospitals.*

*The California Occupational Safety and Health Act of 1973 imposes safety responsibilities on employers and employees, including the requirement that an employer establish, implement, and maintain an effective injury prevention program, and makes specified violations of these provisions a crime.*

*This bill would require the Occupational Safety and Health Standards Board, no later than July 1, 2015, to adopt standards developed by the Division of Occupational Safety and Health that require specified types of hospitals, including a general acute care hospital or an acute psychiatric hospital, to adopt a workplace violence prevention plan as a part of the hospital's injury and illness prevention plan to protect health care workers and other facility personnel from aggressive and violent behavior. The bill would require the standards to include prescribed requirements for a plan. The bill would require the division, by January 1, 2017, and annually thereafter, to post a report on its Internet Web site containing specified information regarding violent incidents at hospitals.*

*Because this bill would expand the scope of a crime, the bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law requires an employer to establish, implement, and maintain an effective injury prevention program, as prescribed.~~

~~This bill would make a nonsubstantive change to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 6401.8 is added to the Labor Code, to
- 2     read:
- 3     6401.8. (a) The standards board, no later than July 1, 2015,
- 4     shall adopt standards developed by the division that require a
- 5     hospital licensed pursuant to subdivision (a), (b), or (f) of Section
- 6     1250 of the Health and Safety Code to adopt a workplace violence
- 7     prevention plan as a part of its injury and illness prevention plan
- 8     to protect health care workers and other facility personnel from
- 9     aggressive and violent behavior.
- 10    (b) The standards adopted pursuant to subdivision (a) shall
- 11    include all of the following:
- 12    (1) A requirement that the workplace violence prevention plan
- 13    be in effect at all times in all patient care units, including inpatient
- 14    and outpatient settings and clinics on the hospital's license.
- 15    (2) A definition of workplace violence that includes, but is not
- 16    limited to, both of the following:
- 17    (A) The use of physical force against a hospital employee by a
- 18    patient or a person accompanying a patient that results in, or has
- 19    a high likelihood of resulting in, injury, psychological trauma, or
- 20    stress, regardless of whether the employee sustains an injury.
- 21    (B) An incident involving the use of a firearm or other dangerous
- 22    weapon, regardless of whether the employee sustains an injury.
- 23    (3) A requirement that a workplace violence prevention plan
- 24    include, but not be limited to, all of the following:

1     (A) *Personnel education and training policies that require all*  
2 *health care workers who provide direct care to patients to, at least*  
3 *annually, receive education and training that is designed to provide*  
4 *an opportunity for interactive questions and answers with a person*  
5 *knowledgeable about the workplace violence prevention plan. The*  
6 *education and training shall cover topics that include, but are not*  
7 *limited to, the following:*

8     (i) *How to recognize potential for violence, and when and how*  
9 *to seek assistance to prevent or respond to violence.*

10    (ii) *How to report violent incidents to law enforcement.*

11    (iii) *Any resources available to employees for coping with*  
12 *incidents of violence, including, but not limited to, critical incident*  
13 *stress debriefing or employee assistance programs.*

14    (B) *A system for responding to, and investigating violent*  
15 *incidents and situations involving violence or the risk of violence.*

16    (C) *A system to, at least annually, assess and improve upon*  
17 *factors that may contribute to, or help prevent workplace violence,*  
18 *including, but not limited to, the following:*

19    (i) *Staffing, including staffing patterns and patient classification*  
20 *systems that contribute to, or are insufficient to address, the risk*  
21 *of violence.*

22    (ii) *Sufficiency of security systems, including security personnel*  
23 *availability.*

24    (iii) *Job design, equipment, and facilities.*

25    (iv) *Security risks associated with specific units, areas of the*  
26 *facility with uncontrolled access, late-night or early morning shifts,*  
27 *and employee security in areas surrounding the facility such as*  
28 *employee parking areas.*

29    (4) *A requirement that all workplace violence prevention plans*  
30 *be developed in conjunction with affected employees, including*  
31 *their recognized collective bargaining agents, if any.*

32    (5) *A requirement that all temporary personnel to be oriented*  
33 *to the workplace violence prevention plan.*

34    (6) *Provisions prohibiting hospitals from disallowing an*  
35 *employee from, or taking punitive or retaliatory action against an*  
36 *employee for, seeking assistance and intervention from local*  
37 *emergency services or law enforcement when a violent incident*  
38 *occurs.*

39    (7) *A requirement that hospitals document, and retain for a*  
40 *period of five years, a written record of any violent incident against*

1 a hospital employee, regardless of whether the employee sustains  
2 an injury, and regardless of whether the report is made by the  
3 employee who is the subject of the violent incident or any other  
4 employee.

5 (8) A requirement that a hospital report violent incidents to the  
6 division. If the incident results in injury, involves the use of a  
7 firearm or other dangerous weapon, or presents an urgent or  
8 emergent threat to the welfare, health, or safety of hospital  
9 personnel, the hospital shall report the incident to the division  
10 within 24 hours. All other incidents of violence shall be reported  
11 to the division within 72 hours.

12 (c) By January 1, 2017, and annually thereafter, the division,  
13 in a manner that protects patient and employee confidentiality,  
14 shall post a report on its Internet Web site containing information  
15 regarding violent incidents at hospitals, that includes, but is not  
16 limited to, the total number of reports, and which specific hospitals  
17 filed reports, pursuant to paragraph (7) of subdivision (b), the  
18 outcome of any related inspection or investigation, the citations  
19 levied against a hospital based on a violent incident, and  
20 recommendations of the division on the prevention of violent  
21 incidents at hospitals.

22 SEC. 2. No reimbursement is required by this act pursuant to  
23 Section 6 of Article XIII B of the California Constitution because  
24 the only costs that may be incurred by a local agency or school  
25 district will be incurred because this act creates a new crime or  
26 infraction, eliminates a crime or infraction, or changes the penalty  
27 for a crime or infraction, within the meaning of Section 17556 of  
28 the Government Code, or changes the definition of a crime within  
29 the meaning of Section 6 of Article XIII B of the California  
30 Constitution.

31 SECTION 1. ~~Section 6401.7 of the Labor Code is amended to~~  
32 ~~read:~~

33 ~~6401.7. (a) Each employer shall establish, implement, and~~  
34 ~~maintain an effective injury prevention program. The program~~  
35 ~~shall be written, except as provided in subdivision (e), and shall~~  
36 ~~include, but not be limited to, the following elements:~~

37 ~~(1) Identification of the person or persons responsible for~~  
38 ~~implementing the program.~~

1     ~~(2) The employer's system for identifying and evaluating~~  
2     ~~workplace hazards, including scheduled periodic inspections to~~  
3     ~~identify unsafe conditions and work practices.~~

4     ~~(3) The employer's methods and procedures for correcting~~  
5     ~~unsafe or unhealthy conditions and work practices in a timely~~  
6     ~~manner.~~

7     ~~(4) An occupational health and safety training program designed~~  
8     ~~to instruct employees in general safe and healthy work practices~~  
9     ~~and to provide specific instruction with respect to hazards specific~~  
10    ~~to each employee's job assignment.~~

11    ~~(5) The employer's system for communicating with employees~~  
12    ~~on occupational health and safety matters, including provisions~~  
13    ~~designed to encourage employees to inform the employer of~~  
14    ~~hazards at the worksite without fear of reprisal.~~

15    ~~(6) The employer's system for ensuring that employees comply~~  
16    ~~with safe and healthy work practices, which may include~~  
17    ~~disciplinary action.~~

18    ~~(b) The employer shall correct unsafe and unhealthy conditions~~  
19    ~~and work practices in a timely manner based on the severity of the~~  
20    ~~hazard.~~

21    ~~(c) The employer shall train all employees when the training~~  
22    ~~program is first established, all new employees, and all employees~~  
23    ~~given a new job assignment, and shall train employees whenever~~  
24    ~~new substances, processes, procedures, or equipment are introduced~~  
25    ~~to the workplace and represent a new hazard, and whenever the~~  
26    ~~employer receives notification of a new or previously unrecognized~~  
27    ~~hazard. An employer in the construction industry who is required~~  
28    ~~to be licensed under Chapter 9 (commencing with Section 7000)~~  
29    ~~of Division 3 of the Business and Professions Code may use~~  
30    ~~employee training provided to the employer's employees under a~~  
31    ~~construction industry occupational safety and health training~~  
32    ~~program approved by the division to comply with the requirements~~  
33    ~~of subdivision (a) relating to employee training, and shall only be~~  
34    ~~required to provide training on hazards specific to an employee's~~  
35    ~~job duties.~~

36    ~~(d) The employer shall keep appropriate records of steps taken~~  
37    ~~to implement and maintain the program. An employer in the~~  
38    ~~construction industry who is required to be licensed under Chapter~~  
39    ~~9 (commencing with Section 7000) of Division 3 of the Business~~  
40    ~~and Professions Code may use records relating to employee training~~

1 provided to the employer in connection with an occupational safety  
2 and health training program approved by the division to comply  
3 with this subdivision, and shall only be required to keep records  
4 of those steps taken to implement and maintain the program with  
5 respect to hazards specific to an employee's job duties.

6 (e) (1) The standards board shall adopt a standard setting forth  
7 the employer's duties under this section, on or before January 1,  
8 1991, consistent with the requirements specified in subdivisions  
9 (a), (b), (c), and (d). The standards board, in adopting the standard,  
10 shall include substantial compliance criteria for use in evaluating  
11 an employer's injury prevention program. The board may adopt  
12 less stringent criteria for employers with few employees and for  
13 employers in industries with insignificant occupational safety or  
14 health hazards.

15 (2) Notwithstanding subdivision (a), for employers with fewer  
16 than 20 employees who are in industries that are not on a  
17 designated list of high hazard industries and who have a workers'  
18 compensation experience modification rate of 1.1 or less, and for  
19 any employers with fewer than 20 employees who are in industries  
20 that are on a designated list of low hazard industries, the board  
21 shall adopt a standard setting forth the employer's duties under  
22 this section consistent with the requirements specified in  
23 subdivisions (a), (b), and (c), except that the standard shall only  
24 require written documentation to the extent of documenting the  
25 person or persons responsible for implementing the program  
26 pursuant to paragraph (1) of subdivision (a), keeping a record of  
27 periodic inspections pursuant to paragraph (2) of subdivision (a),  
28 and keeping a record of employee training pursuant to paragraph  
29 (4) of subdivision (a). To any extent beyond the specifications of  
30 this subdivision, the standard shall not require the employer to  
31 keep the records specified in subdivision (d).

32 (3) (A) The division shall establish a list of high hazard  
33 industries using the methods prescribed in Section 6314.1 for  
34 identifying and targeting employers in high hazard industries. For  
35 purposes of this subdivision, the "designated list of high hazard  
36 industries" shall be the list established pursuant to this paragraph.

37 (B) For the purpose of implementing this subdivision, the  
38 Department of Industrial Relations shall periodically review, and  
39 as necessary revise, the list.

~~(4) For the purpose of implementing this subdivision, the Department of Industrial Relations shall also establish a list of low hazard industries, and shall periodically review, and as necessary revise, that list.~~

~~(f) The standard adopted pursuant to subdivision (e) shall specifically permit employer and employee occupational safety and health committees to be included in the employer's injury prevention program. The board shall establish criteria for use in evaluating employer and employee occupational safety and health committees. The criteria shall include minimum duties, including the following:~~

~~(1) Review of the employer's periodic, scheduled worksite inspections; investigation of causes of incidents resulting in injury, illness, or exposure to hazardous substances; and investigation of any alleged hazardous condition brought to the attention of any committee member. When determined necessary by the committee, the committee may conduct its own inspections and investigations.~~

~~(2) (A) Upon request from the division, verification of abatement action taken by the employer as specified in division citations:~~

~~(B) If an employer's occupational safety and health committee meets the criteria established by the board, it shall be presumed to be in substantial compliance with paragraph (5) of subdivision (a).~~

~~(g) The division shall adopt regulations specifying the procedures for selecting employee representatives for employer-employee occupational health and safety committees when these procedures are not specified in an applicable collective bargaining agreement. No employee or employee organization shall be held liable for any act or omission in connection with a health and safety committee.~~

~~(h) The employer's injury prevention program, as required by this section, shall cover all of the employer's employees and all other workers who the employer controls or directs and directly supervises on the job to the extent these workers are exposed to worksite and job assignment specific hazards. Nothing in this subdivision shall affect the obligations of a contractor or other employer that controls or directs and directly supervises its own employees on the job.~~

~~(i) When a contractor supplies its employee to a state agency employer on a temporary basis, the state agency employer may~~

1 assess a fee upon the contractor to reimburse the state agency for  
2 the additional costs, if any, of including the contract employee  
3 within the state agency's injury prevention program.

4 (j) (1) The division shall prepare a Model Injury and Illness  
5 Prevention Program for Non-High-Hazard Employment, and shall  
6 make copies of the model program prepared pursuant to this  
7 subdivision available to employers, upon request, for posting in  
8 the workplace. An employer who adopts and implements the model  
9 program prepared by the division pursuant to this paragraph in  
10 good faith shall not be assessed a civil penalty for the first citation  
11 for a violation of this section issued after the employer's adoption  
12 and implementation of the model program.

13 (2) For purposes of this subdivision, the division shall establish  
14 a list of non-high-hazard industries in California. These industries,  
15 identified by their Standard Industrial Classification Codes, as  
16 published by the United States Office of Management and Budget  
17 in the Manual of Standard Industrial Classification Codes, 1987  
18 Edition, are apparel and accessory stores (Code 56), eating and  
19 drinking places (Code 58), miscellaneous retail (Code 59), finance,  
20 insurance, and real estate (Codes 60–67), personal services (Code  
21 72), business services (Code 73), motion pictures (Code 78) except  
22 motion picture production and allied services (Code 781), legal  
23 services (Code 81), educational services (Code 82), social services  
24 (Code 83), museums, art galleries, and botanical and zoological  
25 gardens (Code 84), membership organizations (Code 86),  
26 engineering, accounting, research, management, and related  
27 services (Code 87), private households (Code 88), and  
28 miscellaneous services (Code 89). To further identify industries  
29 that may be included on the list, the division shall also consider  
30 data from a rating organization, as defined in Section 11750.1 of  
31 the Insurance Code, and all other appropriate information. The list  
32 shall be established by June 30, 1994, and shall be reviewed, and  
33 as necessary revised, biennially.

34 (3) The division shall prepare a Model Injury and Illness  
35 Prevention Program for Employers in Industries with Intermittent  
36 Employment, and shall determine which industries have historically  
37 utilized seasonal or intermittent employees. An employer in an  
38 industry determined by the division to have historically utilized  
39 seasonal or intermittent employees shall be deemed to have  
40 complied with the requirements of subdivision (a) with respect to



1 a written injury prevention program if the employer adopts the  
2 model program prepared by the division pursuant to this paragraph  
3 and complies with any instructions relating thereto.

4 (k) ~~With respect to any county, city, city and county, or district,~~  
5 ~~or any public or quasi-public corporation or public agency therein,~~  
6 ~~including any public entity, other than a state agency, that is a~~  
7 ~~member of, or created by, a joint powers agreement, subdivision~~  
8 ~~(d) shall not apply.~~

9 (l) Every workers' compensation insurer shall conduct a review,  
10 including a written report as specified below, of the injury and  
11 illness prevention program (HPP) of each of its insureds with an  
12 experience modification of 2.0 or greater within six months of the  
13 commencement of the initial insurance policy term. The review  
14 shall determine whether the insured has implemented all of the  
15 required components of the HPP, and evaluate their effectiveness.  
16 The training component of the HPP shall be evaluated to determine  
17 whether training is provided to line employees, supervisors, and  
18 upper level management, and effectively imparts the information  
19 and skills each of these groups needs to ensure that all of the  
20 insured's specific health and safety issues are fully addressed by  
21 the insured. The reviewer shall prepare a detailed written report  
22 specifying the findings of the review and all recommended changes  
23 deemed necessary to make the HPP effective. The reviewer shall  
24 be or work under the direction of a licensed California professional  
25 engineer, certified safety professional, or a certified industrial  
26 hygienist.